The opinion in support of the decision being entered today was <u>not</u> written for publication and is <u>not</u> binding precedent of the Board.
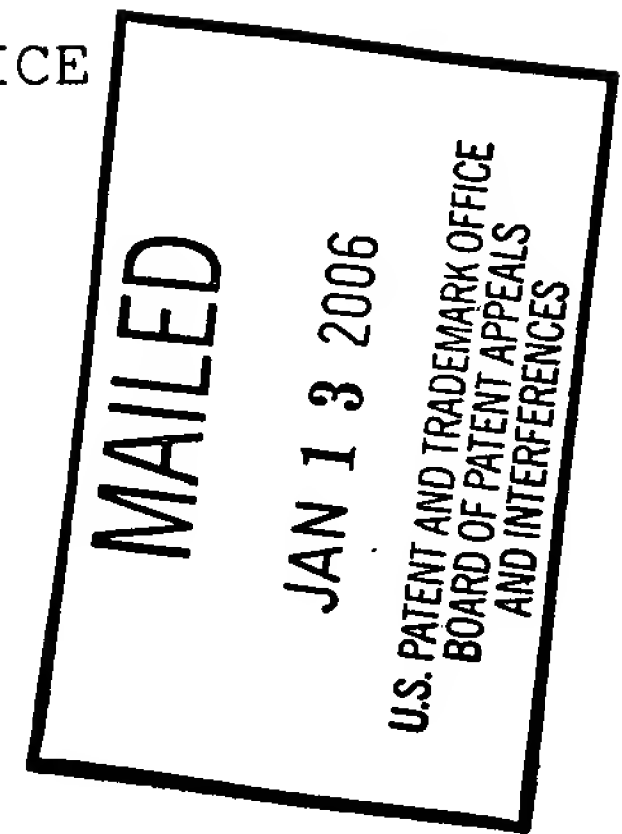
UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

_____

<u>Ex parte</u> DMITRY A. RAYKHMAN

_____

Appeal No. 2005-1999
Application No. 09/415,392

_____

ON BRIEF

_____

Before THOMAS, KRASS and JERRY SMITH, <u>Administrative Patent
Judges</u>.

JERRY SMITH, <u>Administrative Patent Judge</u>.

<u>DECISION ON APPEAL</u>

     This is a decision on the appeal under 35 U.S.C. § 134

from the examiner's rejection of claims 1-8, 10-13, 16-25 and 55-

66, which constitute all the claims pending in this application.

     The disclosed invention pertains to a method for trading

a commodity.

Representative claim 1 is reproduced as follows:

1. A method for trading a commodity, comprising:

receiving, in encoded form via a computer network, a plurality of bids and a plurality of offers pertaining to a common commodity;

displaying the bids and offers on a computer monitor;

generating a trading offer including a trading rate or price per unit of the commodity, and a number of units of the commodity;

automatically calculating a total stop amount for the trading offer, the total stop amount being a monetary amount required to cover a stop execution on the trading offer, the total stop amount including a primary quantity equal to a stop value multiplied by the number of units of the commodity included in the trading offer;

automatically comparing the total stop amount with an available amount in a client or trader account; and

transmitting a digital signal encoding the trading offer over the computer network for distribution to multiple traders.

The examiner relies on the following references:

Wagner	4,980,826	Dec. 25, 1990	
Silverman et al. (Silverman '501)	5,136,501	Aug. 04, 1992	
Woolston	5,845,265	Dec. 01, 1998	
Silverman et al. (Silverman '082)	5,924,082	July 13, 1999	
Hawkins et al. (Hawkins)	6,029,146	Feb. 22, 2000 (filed Aug. 21, 1996)	

"Technical Analysis Programs - Comparison," <u>AAII Computerized
Investing Newsletter</u>," (Equis Int'l, AAII, May/June
1998)(hereinafter referred to as "Equis").

The following rejections are on appeal before us:

1. Claims 1, 4-8, 10-13, 58 and 61-66 stand rejected
under 35 U.S.C. § 102(b) as being anticipated by the disclosure
of Wagner.

2. Claims 16, 17, 22, 55 and 56 stand rejected under
35 U.S.C. § 102(b) as being anticipated by the disclosure of
Silverman '501.

3. Claims 2, 3, 59 and 60 stand rejected under 35 U.S.C.
§ 103(a) as being unpatentable over the teachings of Wagner in
view of Equis.

4. Claims 18-20 and 23-25 stand rejected under 35 U.S.C.
§ 103(a) as being unpatentable over the teachings of Silverman
'501 in view of Hawkins.

5. Claim 21 stands rejected under 35 U.S.C. § 103(a) as
being unpatentable over the teachings of Silverman '501 in view
of Woolston.

6. Claim 57 stands rejected under 35 U.S.C. § 103(a) as
being unpatentable over the teachings of Silverman '501 in view
of Silverman '082.

Rather than repeat the arguments of appellant or the examiner, we make reference to the briefs and the answer for the respective details thereof.

OPINION

We have carefully considered the subject matter on appeal, the rejections advanced by the examiner and the evidence of anticipation and obviousness relied upon by the examiner as support for the rejections. We have, likewise, reviewed and taken into consideration, in reaching our decision, the appellant's arguments set forth in the briefs along with the examiner's rationale in support of the rejections and arguments in rebuttal set forth in the examiner's answer.

It is our view, after consideration of the record before us, that the evidence relied upon supports each of the examiner's rejections of the claims on appeal. Accordingly, we affirm.

We consider first the rejections of the claims under 35 U.S.C. § 102. Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. RCA Corp. v. Applied Digital

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Data Sys., Inc., 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed.

Cir.), cert. dismissed, 468 U.S. 1228 (1984); W.L. Gore &

Assocs., Inc. v. Garlock, Inc., 721 F.2d 1540, 1554, 220 USPQ

303, 313 (Fed. Cir. 1983), cert. denied, 469 U.S. 851 (1984).

With respect to the rejection based on Wagner, the

examiner has indicated how the claimed invention is deemed to be

fully met by the disclosure of Wagner (final rejection, pages 2-

5). With respect to independent claim 1, appellant argues that

Wagner fails to disclose a total stop amount as that term is

defined in claim 1. Appellant argues that the portions of Wagner

referred to by the examiner fail to support the examiner's

findings. Appellant also argues that Wagner does not inherently

disclose the claimed total stop amount (brief, pages 7-10). The

examiner responds that the clearing system of Wagner would

inherently check to make sure that a monetary amount necessary to

complete the total cost of the transaction (total quantity

multiplied by the per unit cost) would be determined in order for

the trade to be completed. The examiner notes that although

Wagner does not use the term "total stop amount," the clearing

system calculates the amount necessary to cover the cost of the

transaction as defined in claim 1 (answer, page 4). Appellant

responds that the examiner has provided no support for the assertion that Wagner inherently calculates a total stop amount. Appellant also responds that a total cost of the transaction as calculated in Wagner is not the same as the claimed total stop amount (reply brief, pages 1-2).

We will sustain the examiner's rejection of independent claim 1. The only limitation of claim 1 argued is the calculation of a "total stop amount" which is the "monetary amount required to cover a stop execution on the trading offer," and wherein the total stop amount includes a "primary quantity equal to a stop value multiplied by the number of units of the commodity included in the trading offer." There is no question that Wagner discloses a commodities trading system and method which automatically calculates and handles the costs associated with various transactions. Wagner notes that his system can handle a full array of futures orders including straddles, limit orders and stop orders (column 4, lines 33-36). Thus, Wagner discloses that his system will handle stop orders, which we interpret as including the calculation of total costs associated with stop orders. Since we find that Wagner will calculate a total stop amount, that is, the amount required to cover a stop

execution on the trading offer, the only question is whether the
stop amount calculated in Wagner meets the definition recited in
claim 1. The definition recited in claim 1 is that the total
stop value includes a primary quantity equal to a stop value
multiplied by the number of units of the commodity included in
the trading offer. We agree with the examiner that this
definition is broad enough to be met by Wagner. Whatever cost is
calculated in Wagner when carrying out a stop order, that cost is
equal to a unit stop value multiplied by the number of units
included in the trade. In other words, even if Wagner never
explicitly performs this multiplication, the total cost of the
stop order will equal a unit stop value multiplied by the number
of units traded. The examiner is correct that the total stop
value calculated in Wagner inherently can be equated to the
multiplication of the two terms recited in claim 1.

With respect to dependent claim 4, appellant additionally
argues that Wagner fails to disclose the automatic allocation or
reservation of a calculated stop amount from the available amount
in a client or trader account (brief, pages 10-11). The examiner
responds that since Wagner determines whether there are
sufficient funds available to the buyer in a buyer account, then

the costs associated with a stop order must be allocated or reserved from the buyer's account (answer, page 5).

We will sustain the examiner's rejection of dependent claim 4. We agree with the examiner that the costs associated with a stop order in Wagner would be subtracted from a client's account so that it would become unavailable to the client.

With respect to dependent claim 6, appellant additionally argues that Wagner fails to disclose that a digital signal is transmitted only upon a determination that the total stop amount is less than the available amount in the client or trader account (brief, page 11). The examiner responds that Wagner checks that sufficient funds are available for the transaction to be completed before a signal is sent that indicates completion of the trade (answer, page 5).

We will sustain the examiner's rejection of dependent claim 6 for the reasons argued by the examiner in the answer. We agree with the examiner that Wagner sends some signals to traders only upon a determination that there is sufficient money in a client's account.

With respect to dependent claim 7, appellant argues that Wagner fails to teach that the generating and comparing steps are

performed at the client computer. Specifically, appellant argues that these steps are performed by the central computer in Wagner (brief, pages 11-12). The examiner responds that the client computer in Wagner performs an action that indirectly makes the claimed comparison. The examiner notes that while the clearing house is directly responsible for making the comparison, the client computer performs actions that are necessary for the comparison to occur (answer, pages 5-6). Appellant responds that the performing of a first action on one computer that may result in a second action on another computer is not the same as the one computer performing and having total control over the second action (reply brief, page 2).

We will not sustain the examiner's rejection of dependent claim 7. The examiner admits that the comparing step of claim 7 is performed by the central computer in Wagner and not by the client computer as recited in claim 7. The examiner dismisses this distinction by asserting that the values to be compared in Wagner still must come from the client computer. However, the fact that the values to be compared in Wagner come from the client computer does not meet the claim recitation that the comparison itself is performed at the client computer. Since the

rejection is based on anticipation, Wagner fails to disclose every feature of the claimed invention.

With respect to dependent claim 10, appellant argues that Wagner fails to disclose a stop value as a stop amount per unit of the commodity (brief, page 12). The examiner responds that Wagner meets the claimed invention because Wagner verifies that there are sufficient funds to cover the total cost (unit cost multiplied by quantity) (answer, page 6).

We will not sustain the examiner's rejection of dependent claim 10. Although the total stop amount equals a unit value multiplied by the number of units traded as noted above with respect to claim 1, Wagner never discloses that a stop amount per unit is ever identified. Although it may inherently be used in Wagner, there is no requirement that a stop amount per unit be identified. Since the rejection is based on anticipation, Wagner fails to disclose every feature of the claimed invention.

With respect to dependent claim 11, appellant additionally argues that Wagner fails to disclose the claimed steps and that there is no support for the examiner's reliance on inherency (brief, page 13). The examiner responds that the total cost is inputted in Wagner in the form of quantity and price as

shown in Figure 23 (answer, page 6). Appellant responds that the examiner is defining a claim term in contravention of the definition explicitly stated in the claims (reply brief, page 2).

We will sustain the examiner's rejection of dependent claim 11. We agree with the examiner that Figure 23 of Wagner prompts the client for entry of quantity and price parameters. Since Wagner discloses that it can handle stop orders, we agree with the examiner that a stop order would require a prompt for entry of the stop value to be forwarded to the computer network.

Since these are the only claims argued by appellant, the other claims rejected as anticipated by Wagner stand or fall with the claim from which they respectively depend. As a result, the rejection of claims 1, 4-8, 10-13, 58 and 61-66 is sustained with respect to claims 1, 4-6, 8, 11-13, 58 and 61-66, but is not sustained with respect to claims 7 and 10.

With respect to the rejection based on Silverman '501, the examiner has indicated how the claimed invention is deemed to be fully met by the disclosure of Silverman '501 (final rejection, pages 5-8). With respect to independent claim 16, appellant argues that Silverman '501 fails to disclose the transmission of a trading order over the computer network upon

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and only upon determining that sufficient capital is available in the account. Appellant also argues that Silverman '501 fails to disclose comparing a total currency amount with a capital amount available in a given account. Specifically, appellant notes that the comparison in Silverman '501 is with one or more credit limits set by the parties (brief, pages 13-15). The examiner responds that capital that is available by way of credit constitutes capital that is available to the trader at the time of the transaction (answer, pages 6-7).

We will not sustain the examiner's rejection of independent claim 16. Claim 16 recites that an order signal is transmitted over the computer network to a server computer upon and only upon determining that sufficient capital is available in the account. In Silverman '501, however, an order signal is transmitted to the computer network regardless of whether there is sufficient capital available in the account. It is the server computer in Silverman '501 that makes this determination. Since the rejection is based on anticipation, Silverman '501 fails to disclose every feature of the claimed invention.

With respect to independent claim 22, appellant argues that Silverman '501 discloses that trading offers are forwarded

over the computer network as a matter of course prior to and
independently of whether there are sufficient funds in the
account (brief, pages 15-16). The examiner responds that
although Silverman '501 uploads offers before the credit limit is
checked, the offer is not valid until the funds are verified.
The examiner asserts, therefore, that the verification in
Silverman '501 precedes the submission of a valid offer to buy or
sell (answer, page 7). Appellant responds that the examiner is
redefining the claim language to mean something other than what
is expressly claimed. Specifically, appellant argues that the
examiner has changed the claim term "offer" to mean a valid offer
(reply brief, pages 2-3).

We will not sustain the examiner's rejection of
independent claim 22 for essentially the reasons argued by
appellant. The examiner cannot properly interpret the claim
language "offer" to mean a valid offer. The offers forwarded in
Silverman '501 do not meet the "upon and only upon" condition of
claim 22.

With respect to representative independent claim 55,
appellant argues that Silverman '501 fails to disclose that the
same server computer that maintains queues of bids and offers

also modifies accounts of traders who made trade offers on which a trade is executed because the central system of Silverman '501 does not maintain accounts. Appellant argues that operating a server computer to modify accounts of traders is not the same as operating the server computer to send a signal to another computer that subsequently effects a modification of trader accounts (brief, pagers 17-18). The examiner responds that central computer 20 of Silverman '501 is indirectly responsible for modifying user accounts (answer, page 7). Appellant responds that the examiner again imputes an action done by a first computer to a second computer (reply brief, page 3).

We will not sustain the examiner's rejection of independent claim 55. Claim 55 recites that a single server computer performs several recited functions. In Silverman '501, however, a separate computer is used to perform some of the claimed functions. The fact that the second computer performs functions in response to a signal from the first computer means that Silverman '501 fails to disclose a single computer as claimed. Since the rejection is based on anticipation, Silverman '501 fails to disclose every feature of the claimed invention.

Since these are the only claims argued by appellant, the other claims rejected as anticipated by Silverman '501 stand or fall with the claim from which they respectively depend. As a result, the rejection of claims 16, 17, 22, 55 and 56 is not sustained with respect to any of these claims.

With respect to the rejections of the claims under 35 U.S.C. § 103, appellant has not specifically argued any of the claims subject to these rejections. Since claims 2 and 3 depend from claim 1 and have not been separately argued, the rejection of these claims is sustained for the reasons discussed above with respect to claim 1. Since claims 18-21 depend from claim 16, and since the examiner's findings with respect to claim 16 do not support the rejection of claim 16, the examiner's findings also do not support the rejection of these claims. Since claims 23-25 depend from claim 22, and since the examiner's findings with respect to claim 22 do not support the rejection of claim 22, the examiner's findings also do not support the rejection of these claims. Since claim 57 depends from claim 55, and since the examiner's findings with respect to claim 55 do not support the rejection of claim 55, the examiner's findings also do not support the rejection of claim 57. Since claims 59 and 60 depend

from claim 58, and since the examiner's findings with respect to claim 58 support the rejection of claim 58, the examiner's findings also support the rejection of these claims.

In summary, we have sustained the examiner's rejection of claims 1-6, 8, 11-13 and 58-66, but we have not sustained the examiner's rejection of claims 7, 10, 16-25 and 55-57. Therefore, the decision of the examiner rejecting claims 1-8, 10-13, 16-25 and 55-66 is affirmed-in-part.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 CFR § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

JAMES D. THOMAS   )
Administrative Patent Judge   )
)
)
) BOARD OF PATENT
ERROL A. KRASS   )
Administrative Patent Judge   )   APPEALS AND
)
)   INTERFERENCES
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JERRY SMITH   )
Administrative Patent Judge   )

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